IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1416 of 2005
WITH
SPECIAL CIVIL APPLICATION No. 3637 of 2005
TO
SPECIAL CIVIL APPLICATION No. 3776 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAXIN GUJARAT LABOUR UNION & 141 - Petitioner(s)
Versus
STATE OF GUJARAT & 6 - Respondent(s)

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Appearance :

MR SHALIN N MEHTA for Petitioner No(s).: 1,2,3,4,5,6,7,
8,9,10,11,12,13,14,15,16,
17,18,19,20,21,22,23,24,25,
26,27,28,29,30,31,32,33,34,
35,36,37,38,39,40,41,42,43,
44,45,46,47,48,49,50,51,52,
53,54,55,56,57,58,59,60,61,
62,63,64,65,66,67,68,69,70,
71,72,73,74,75,76,77,78,79,
80,81,82,83,84,85,86,87,88,
89,90,91,92,93,94,95,96,97,
98,99,100,101,102,103,104,105,106,
107,108,109,110,111,112,113,114,115,
116,117,118,119,120,121,122,123,124,
125,126,127,128,129,130,131,132,133,
134,135,136,137,138,139,140,141.

MS. REETA CHANDARANA for Respondent No(s).: 1, 2, 4, 5,6.
DS AFF.NOT FILED (R) for Respondent No(s).: 1, 2, 4, 5,6.
RULE SERVED BY DS for Respondent No(s).: 3.
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CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date : 23/06/2005

ORAL JUDGMENT

1. In this group of petitions under Article 226 of the Constitution, the petitioners, employed in Roads & Buildings Department of the State Government, who acquired permanency in service by virtue of the Resolution dated 17.10.1988, have agitated, after retirement, the claims of pension, gratuity and encashment of accumulated earned leave due upon revision of their pay-scale. There is no controversy about the factual and legal position that the petitioners are entitled to the additional retiral benefits upon revision of pay scales in terms of the Government Resolution dated 16.09.2004, issued by the Road & Building Department of the State Government. There is also no dispute about the fact that the petitioners are already accorded the benefits of pension and gratuity and the claim is therefore, restricted to the additional amounts due upon revision of pay-scale w.e.f. 01.01.1996. As for the claim of encashment of the accumulated earned leave, the issue of entitlement is stated to be directly or indirectly involved in the litigation which is pending before the Hon'ble Supreme Court in the form of SLP (C) No.6979/2005 arising from the judgment dated 10.03.2004 of a Division Bench of this Court in LPA No.1134/1997.

2. The submission of the Ld. Counsel Mr. S.N. Mehta for the petitioners was that the respondents ought to have calculated the amounts due to the petitioners upon revision of pay-scale in terms of the resolution dated 16.09.2004 at least by 31st December, 2004 and further delay in the matter of making payment was not justified and, therefore, such amounts were required to be ordered to be paid with interest at the rate of 12% per annum. He also submitted that, as held by the Division Bench of this Court in the aforesaid judgment in LPA No.1134/1997, the employees of the Road & Building Department were, upon becoming permanent by virtue of Resolution dated 17.10.1988, entitled to all the benefits that were available to the permanent employees and no order diluting or reversing the same could be passed by any other authority or functionary of the State Government.

3. The Ld. AGP Ms. Reeta Chandarana appearing for the State submitted that in absence of any facual controversy, no affidavit-in-reply on behalf of the respondent was filed, but the responsible officer of the level of Under Secretary of the Road & Building Department was kept present and on his instruction, the statements as recorded hereinbelow was made and for other departments also the same statements has to be made.

4. It was stated on behalf of the respondents that as for the amounts due to the petitioners upon revision of pay scale and under the head of additional amounts of pension and gratuity, calculation of the arrears shall be made and the total amounts of arrears shall be paid by the end of this year i.e. 31st December, 2005. The respondent shall make payment of pension at the revised rate w.e.f. 1st September, 2005 so as to reduce the burden of interest on the arrears. As for the encashment of accumulated earned leave, it was stated that the State Government shall abide by the final order that may be made by the Hon'ble Supreme Court in the aforesaid proceedings pending before the Hon'ble Supreme Court and if the wider interpretation as to the effect and ambit of the Resolution dated 17.10.1988 as given by the Division Bench of this Court in the judgment dated 10.03.2004 in LPA No.1134/1997 were upheld, the respondents shall pay the amounts due on account of encashment of accumulated earned leave at par with and subject to the rules applicable to the permanent employees of the State Government, within a period of three months from the date of judgment of the Supreme Court.

5. Upon the above statements fairly made on behalf of the respondents being incorporated in this judgment, the only issue to be decided is as to the grant of interest due on account of delayed payment of the arrears of pension and gratuity on the basis of revised pay-scale. The Ld. Counsel relied upon the

number of resolutions of the Government and judgments of this Court to argue that interest was allowed or awarded at varying rates in different circumstances, where the payment of retiral dues were unduly delayed. The Ld. AGP submitted that upon revision of pay-scale, the amounts due on account of the revised pension and amounts of gratuity have to be calculated in each case and that takes some time due to the administrative procedure and difficulties. However, reasonable time to be allowed for such purpose cannot be more than three months since in several other Government Resolutions and Circulars, the time limit fixed for completing such procedure appears to be around three months. In fact, by Circular dated 12.10.1999 of the State Government in its Finance Department, the officers concerned are expressly instructed to see that the payment of retiral benefits to the retired employees was not delayed. An earlier circular dated 19.04.1999 prescribes time limit of three months from the date of retirement for payment of pension, gratuity and other related benefits. Thus, the delay in payment of arrears beyond three months can hardly be justified.

6. Therefore, the respondent concerned are directed to make the payment of arrears in terms of statement recorded hereinabove with interest @ 6% per annum from 01.01.2005 till the date of payment of arrears. If such amounts of arrears and interest due thereon are not paid by 31.12.2005, the total amount due as on

that date by way of the principle amounts and interest thereon, shall carry interest @ 9% per annum for the subsequent period till actual payment. As for the amounts due on account of encashment of the accumulated earned leave, the respondents shall abide by the statement recorded hereinabove.

7. Accordingly, the petitions are partly allowed and Rule in each petition is made absolute to the aforesaid extent with no order as to costs. Parties shall have liberty to approach in case of difficulty.

(D.H.WAGHELA, J.)

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